

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JAMES HODGKINS,)
)
Plaintiff,)
)
vs.)
) CIVIL NO. 06-668-MJR
MEARL J. JUSTUS, T.J. COLLINS,)
WEXFORD HEALTH SERVICES, and)
DR. AMPADOO,)
)
Defendants.)

MEMORANDUM AND ORDER

REAGAN, District Judge:

Plaintiff, a detainee in the St. Clair County Jail, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

- (a) **Screening.**— The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**— On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—
 - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
 - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Upon careful review of the complaint and any supporting exhibits, the Court finds that none of the claims in the complaint may be dismissed at this

point in the litigation.

FACTUAL ALLEGATIONS

Plaintiff, a detainee in the St. Clair County Jail, states the following. At the end of June or beginning of July 2006, Plaintiff informed the medical unit at the jail that he was having intense pain in an incoming wisdom tooth and a cracked molar. Two weeks after his initial complaint of pain, Plaintiff was given ibuprofen, which did not alleviate the pain. Plaintiff, therefore, continued to file requests seeking dental treatment and stronger pain medication. Around July 30, 2007, Plaintiff began receiving Tylenol with codeine for the pain. Plaintiff states, however, that by that time his pain was so intense that the Tylenol with codeine was “useless.” Plaintiff continued to send sick call slips to the healthcare unit and complaints regarding his treatment to Defendant Collins. At an unspecified time later, Plaintiff saw Defendant Dr. Ampadoo. Dr. Ampadoo, who is not a dentist, looked in Plaintiff’s mouth and concluded that nothing was wrong with his teeth. Dr. Ampadoo also refused to prescribe any other pain medication. In response to Plaintiff’s grievances, Defendant Collins informed Plaintiff that there “was no openings for dental appointments because the facility is without a dentist and uses an off-site dental facility.”

Plaintiff argues that all defendants acted with deliberate indifference to Plaintiff’s serious medical needs in violation of the constitution. Further, he argues that it was an unofficial policy or custom in the St. Clair County Jail to deny any dental treatment to jail inmates.

LEGAL STANDARDS

[F]or a pretrial detainee to establish a deprivation of his due process right to adequate medical care, he must demonstrate that a government official acted with deliberate indifference to his objectively serious medical needs. *See Qian*, 168 F.3d at 955. This inquiry includes an objective and subjective component. The objective aspect of the inquiry concerns the pretrial detainee’s medical condition; it must be an injury that is, “objectively, sufficiently serious.” *Farmer v. Brennan*, 511 U.S. 825, 834,

114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) (internal quotations omitted); *see also Henderson v. Sheahan*, 196 F.3d 839, 845 (7th Cir. 1999). “A ‘serious’ medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.” *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997).

Even if the plaintiff satisfies this objective component, he also must tender sufficient evidence to meet the subjective prong of this inquiry. In particular, the plaintiff must establish that the relevant official had “a sufficiently culpable state of mind[,] ... deliberate indifference to [the detainee’s] health or safety.” *Farmer*, 511 U.S. at 834, 114 S.Ct. 1970. Evidence that the official acted negligently is insufficient to prove deliberate indifference. *See Payne*, 161 F.3d at 1040. Rather, as we have noted, “‘deliberate indifference’ is simply a synonym for intentional or reckless conduct, and that ‘reckless’ describes conduct so dangerous that the deliberate nature of the defendant’s actions can be inferred.” *Qian*, 168 F.3d at 955. Consequently, to establish deliberate indifference, the plaintiff must proffer evidence “demonstrating that the defendants were aware of a substantial risk of serious injury to the detainee but nevertheless failed to take appropriate steps to protect him from a known danger.” *Payne*, 161 F.3d at 1041. Simply put, an official “must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Higgins*, 178 F.3d at 510. Even if he recognizes the substantial risk, an official is free from liability if he “responded reasonably to the risk, even if the harm ultimately was not averted.” *Farmer*, 511 U.S. at 843, 114 S.Ct. 1970.

Jackson v. Illinois Medi-Car, Inc., 300 F.3d 760, 764-65 (7th Cir. 2002). The Seventh Circuit has recognized that dental care is “one of the most important medical needs of inmates.” *See Wynn v. Southward*, 251 F.3d 588, 593 (7th Cir. 2001).

Based on these legal standards and Plaintiff’s factual allegations, Plaintiff has stated a claim of deliberate indifference to his serious medical needs against Defendants Ampadoo and Collins, because he has sufficiently alleged that these defendants were personally responsible for denying him dental treatment. *See Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001), quoting *Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir. 2001), (“to be held individually liable, a defendant must be ‘personally responsible for the deprivation of a constitutional right’”).

Plaintiff also names Wexford Health Services, the corporate provider of medical services in

the St. Clair County Jail, as a defendant in the action. The Seventh Circuit has held that a corporate entity violates an inmate's constitutional rights, in this case deliberate indifference to Plaintiff's serious medical needs, only when it has a policy or practice that creates conditions that infringe upon an inmate's constitutional rights. *See Woodward v. Corr. Medical Serv. of Ill., Inc.*, 368 F.3d 917, 927 (7th Cir. 2004). Plaintiff states that the St. Clair County Jail did in fact have such a practice, but he does not link this practice with Defendant Wexford Health Services, and he fails to name the St. Clair County Jail itself as a defendant. Thus, Plaintiff has not sufficiently stated a claim against Wexford Health Services; it is therefore **DISMISSED** as a defendant from the action.

Plaintiff also names Mearl J. Justus, St. Clair County Sheriff, as a defendant in the caption of the complaint, but nowhere in the statement of allegations does Plaintiff state that Defendant Justus was personally responsible for depriving him of a constitutional right. "The doctrine of respondeat superior does not apply to § 1983 actions; thus to be held individually liable, a defendant must be 'personally responsible for the deprivation of a constitutional right.' " *Sanville*, 266 F.3d at 740. Furthermore, "a plaintiff cannot state a claim against a defendant by including the defendant's name in the caption." *Collins v. Kibort*, 143 F.3d 331, 334 (7th Cir. 1998). Because Plaintiff has not stated how Defendant Justus was personally responsible for denying a constitutional right, Plaintiff has failed to state a claim against him. Defendant Justus is therefore **DISMISSED** as a defendant from the action.

DISPOSITION

Plaintiff may proceed on his deliberate indifference claims against Defendants Ampadoo and Collins. Defendants Justus and Wexford Health Services are **DISMISSED** from the action.

IT IS HEREBY ORDERED that Plaintiff shall complete and submit USM-285 forms for

Defendants Ampadoo and Collins within **THIRTY (30) DAYS** of the date of entry of this Memorandum and Order. The Clerk is **DIRECTED** to send Plaintiff **2** USM-285 forms with Plaintiff's copy of this Memorandum and Order. **Plaintiff is advised that service will not be made on a defendant until Plaintiff submits a properly completed USM-285 form for that defendant.**

The Clerk is **DIRECTED** to prepare Form 1A (Notice of Lawsuit and Request for Waiver of Service of Summons) and Form 1B (Waiver of Service of Summons) for *Defendants Ampadoo and Collins*. The Clerk shall forward those forms, USM-285 forms submitted by the Plaintiff, and sufficient copies of the complaint to the United States Marshal for service.

The United States Marshal is **DIRECTED**, pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, to serve process on *Defendants Ampadoo and Collins* in the manner specified by Rule 4(d)(2) of the Federal Rules of Civil Procedure. Process in this case shall consist of the complaint, applicable forms 1A and 1B, and this Memorandum and Order. For purposes of computing the passage of time under Rule 4(d)(2), the Court and all parties will compute time as of the date it is mailed by the Marshal, as noted on the USM-285 form.

With respect to former employees of St. Clair County Jail who no longer can be found at the work address provided by Plaintiff, the County shall furnish the Marshal with the Defendant's last-known address upon issuance of a court order which states that the information shall be used only for purposes of effectuating service (or for proof of service, should a dispute arise) and any documentation of the address shall be retained only by the Marshal. Address information obtained from the County pursuant to this order shall not be maintained in the court file, nor disclosed by the Marshal.

The United States Marshal shall file returned waivers of service as well as any requests for waivers of service that are returned as undelivered as soon as they are received. If a waiver of service is not returned by a defendant within **THIRTY (30) DAYS** from the date of mailing the request for waiver, the United States Marshal shall:

- Request that the Clerk prepare a summons for that defendant who has not yet returned a waiver of service; the Clerk shall then prepare such summons as requested.
- Personally serve process upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c).
- Within ten days after personal service is effected, the United States Marshal shall file the return of service for the defendant, along with evidence of any attempts to secure a waiver of service of process and of the costs subsequently incurred in effecting service on said defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs incurred by the Marshal's office for photocopying additional copies of the summons and complaint and for preparing new USM-285 forms, if required. Costs of service will be taxed against the personally served defendant in accordance with the provisions of Fed. R. Civ. P. 4(d)(2) unless the defendant shows good cause for such failure.

Plaintiff is **ORDERED** to serve upon defendant or, if appearance has been entered by counsel, upon that attorney, a copy of every further pleading or other document submitted for consideration by this Court. He shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date that a true and correct copy of any document was mailed to defendant or his counsel. Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the complaint, and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this cause is **REFERRED** to a United States Magistrate

Judge for further pre-trial proceedings.

Further, this entire matter is hereby **REFERRED** to a United States Magistrate Judge for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

Plaintiff is under a continuing obligation to keep the Clerk and each opposing party informed of any change in his whereabouts. This shall be done in writing and not later than seven (7) days after a transfer or other change in address occurs.

IT IS SO ORDERED.

DATED this 21st day of August, 2007.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge